

COPY

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of

**BIOELECTRONICS CORPORATION,
IBEX, LLC,
ST. JOHN’S, LLC,
ANDREW J. WHELAN,
KELLY A. WHELAN, AND
ROBERT P. BEDWELL,**

File No. 3-17104

Respondents.

**RESPONDENTS’ REPLY TO DIVISION OF ENFORCEMENT’S RESPONSE TO
RESPONDENTS’ MOTION FOR MORE DEFINITIVE STATEMENT**

Respondents Bioelectronics Corporation (“BIEL”), Ibex, LLC, St. John’s, LLC, Andrew J. Whelan and Kelly A. Whelan (collectively, “Respondents”)¹, respectfully reply to the Division of Enforcement’s response to the Respondents’ motion for a more definitive statement (the “Division’s Response”).

At the heart of the disagreement between the parties is whether or not the Division is required, in its OIP, to (1) identify the transactions upon which the claims are based, including, the parties involved in the purported distribution of unregistered shares (IBEX sold to *private* parties who purportedly sold shares into the public market – we need to know the entire distribution chain of each transaction from IBEX to the private party and thereafter into the

¹ All Respondents excluding only Robert P. Bedwell.

public market, if, in fact, that occurred, which IBEX has no way of knowing), as well as the manner of sale (private or public), the dates of securities transactions, the amounts of money received; and, separately, (2) the specific facts upon which the Division asserts that Andrew Whelan and BIEL held and exercised the power to control Kelly Whelan and IBEX.

Notice of the specific transactions at issue in this case is not only important for each of the Respondents to be able to quantify his, her or its legal exposure in this case, but absolutely critical to each Respondent's ability to formulate defenses on a transaction by transaction basis. For example, to the extent that a Respondent intends to assert a Rule 144 defense to securities transactions, it is not enough that such Respondent claims such exemption generally, but that with respect to each transaction at issue in this action such Respondent proves the facts, including the relevant holding period applicable to such transaction, that qualify such transaction as exempt from the registration requirements under Rule 144. If IBEX sold to a private party, which is perfectly legal, and that private party retained such shares for the applicable holding period under Rule 144, or sold them privately or otherwise sold them legally, then no violation occurred in the private IBEX transaction. IBEX is entitled to know those facts in preparing its defenses. The Respondents have no way of doing that work, or engaging an expert to provide such testimony, without the Division identifying with particularity the specific transactions at issue in this case from the inception of the issuance of shares to IBEX, through the private party transactions and, ultimately, into the public market, if that occurred.

The Division responds at page 7 by offering that the Respondents can figure it out from literally hundreds of thousands of pages of discovery heaped on them by the Division's staff. The offer is ridiculous. Just because a transaction might appear, directly or indirectly, in any one or more of such production does not provide notice to the Respondent that it is required to mount a defense to such transaction or be prepared to pay a judgment in the amount of such transaction.

A Respondent is not required to go on a fishing expedition to try to decipher what claims are being made against it, him or her.

The Division also offers at page 7 that

[a]t the appropriate time, when the Court directs the parties to exchange expert reports and hearing exhibits, or as otherwise agreed by the parties, the Division will provide a listing of the BIEL transactions that it claims violated Section 5, as well as the quantification of the illegal profits that the Whelan Respondents received from these illegal transactions that are subject to disgorgement. During this exchange of exhibits, the Division will expect a similar chart from the Whelan Respondents that supports their own defenses, as it is their burden to demonstrate that the unregistered BIEL transactions were covered by a valid exception to the [registration] requirements.

The proposition is absurd. How, exactly, would the Respondents be able to meet their burden of proving, on a transaction by transaction basis, with expert testimony, that each securities transaction satisfies Rule 144 (including the applicable holding period with respect to such security), while finding out *simultaneously* which transactions are at issue in this action? The Division hopes to put the Respondents to an impossible burden and thereby deprive Respondents of due process of law. The Division presumably knows the individual transactions it is charging Respondents as illegal. It needs to identify those transactions so that Respondents have a fair opportunity to meet their burden of proving a defense with respect to each transaction at issue in this matter.

Separately, the Division's Response flatly refuses to provide the specific facts upon which the Division asserts that Andrew Whelan and BIEL held and exercised the power to

control Kelly Whelan and IBEX. The centerpiece of the Division's case against BIEL and Andrew Whelan, and its entire case against IBEX and Kelly Whelan, rest on the Division's ability to establish such power to control Kelly Whelan and IBEX. They are not affiliates or control persons of BIEL. Accordingly, that power to control is a necessary component of the case. If the Division is unable to allege facts, with particularity, to support such element, the bulk of this case should be stricken and dismissed. If there are facts that the Division believes prove such power to control, the Division should provide notice of such facts in the OIP so that the Respondents would be in a fair position to rebut and defend such facts at the hearing on this matter and, to the extent necessary, engage experts to assist in doing so. Again, the Division's game of hide-the-ball, find-it-if you can approach to this case, coupled with the expedited procedures applicable in these administrative proceedings, would utterly deprive the Respondents of due process of law.

For these reasons, the Court should grant the motion for a more definitive statement in its entirety.

Dated: Santa Monica, California
March 21, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

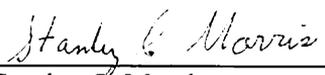
I hereby certify that a true and correct copy of the foregoing was served on the following on March 22, 2016 in the manner indicated below.

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